



1 submit the following Joint Rule 26(f) report.

2           **1. REQUIREMENTS PURSUANT TO RULE 26(f).**

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4           The parties have considered and discussed the following matters required by the  
5 Rule

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7 **(A.) Proposed Discovery Plan.**

- 8           (1) **Changes to be made in the timing, form or requirements of**  
9 **disclosures under Rule 26(a), including a statement as to when**  
10 **disclosures were made or will be made.**

11           The parties do not believe that any changes should be made in the timing, form,  
12 or requirement for disclosures under Rule 26(a). The parties will make the disclosures  
13 required by Rule 26(a)(1) on or before March 2, 2012  
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15  
16 **(B.) The subjects on which discovery may be needed, when discovery should be**  
17 **completed and whether discovery should be conducted in phases or be**  
18 **limited to or focused upon particular issues.**

19           **1. Plaintiff believes discovery on the following topics is necessary:**

- 20           (a) The facts and circumstances surrounding the unauthorized access and  
21 copying of plaintiff's software by defendants;  
22  
23           (b) The factual basis for each of the affirmative defenses asserted by  
24 defendants' in response to plaintiff's complaint;  
25  
26           (c) The facts and circumstances surrounding defendants' use of plaintiff's  
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1 software in its business environment;

2 (d) Defendant's gross revenue derived from the use of plaintiff's program;

3 (e) Additional evidence to support plaintiff's claims for relief.

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5 **2. Defendants believe that discovery will need to be taken with regard**  
6 **to the following topics, among others. Defendants reserve the right**  
7 **to seek discovery on other topics that may be relevant to the issues in**  
8 **this case as discovery unfolds and the parties' legal theories develop:**

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11 a. The facts and circumstances surrounding the nature of plaintiff's  
12 relationship with defendants, and alleged agreement(s) between plaintiff and  
13 defendants;  
14

15 b. The facts and circumstances surrounding plaintiff's trial offers of  
16 its programs to customers and potential customers; plaintiff's use of a tracking system  
17 to gather information about users of its programs; and plaintiff's license agreements  
18 with customers;  
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20  
21 c. The relationship between plaintiff and the company it uses to track  
22 its program and uses of its program.

23  
24 d. Plaintiff's custom and practice with respect to its ownership of the  
25 copyrights in its programs;

26 e. Plaintiff's sales of its programs, license fees, and income derived  
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1 from other litigations;

2 f. Documents and evidence supporting plaintiff's claims.

3 g. Documents and evidence supporting plaintiff's assertion of  
4 damages.  
5

6 **3. The parties propose a discovery cutoff for non-expert discovery of**  
7 **August 1, 2012. The parties propose a discovery cutoff for expert**  
8 **discovery of September 28, 2012.**  
9

10 **4. Discovery in phases or focused on particular issues.**

11 Plaintiff believes an *aspect of discovery* will focus on the apparent  
12 deletion and uninstallation of plaintiff's software by defendants after their receipt of  
13 a cease and desist letter from counsel.  
14

15 Defendants do not agree that there was any improper activity related to  
16 deletion or uninstallation of plaintiff's software. In fact, defendants have already  
17 provided those files to plaintiff as part of cooperative discovery. Defendants believe  
18 that if plaintiff cooperates with defendants, the exact nature of any alleged use of  
19 plaintiff's software by defendants can be easily determined. Defendants believe that  
20 discovery should not be conducted in phases or limited to or focused upon particular  
21 issues.  
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1 **C. Issues about disclosure or discovery of electronically stored information,**  
2 **including the form or forms in which it should be produced.**  
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4 Plaintiff has received from defendants in the spirit of cooperative discovery  
5 certain ESI that has been reviewed. It is not known whether additional ESI exists  
6 regarding the primary issues in this case. Plaintiff hopes that defendants will continue  
7 to be cooperative with respect to further ESI should discovery reveal its presence and  
8 relevance to plaintiff's case in chief. Plaintiff is willing to accept ESI in the form it  
9 is found on defendants' computers.  
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12 Plaintiff further believes, however, that past acts directed at uninstallation and  
13 deletion of ESI will be an important phase of discovery. It may subject defendants to  
14 sanctions for failing to retain and preserve certain ESI upon receipt of a cease and  
15 desist letter from plaintiff. It is possible that imposition of sanctions under Rule  
16 26(A)(ii) and Rule 34(a) of the FRCP may be appropriate.  
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18  
19 Plaintiff further finds that it may necessary to submit a Second Amended  
20 Complaint following further investigation and discovery. Plaintiff suggests that a  
21 claim may exist for misuse and/or deletion of copyright management information in  
22 violation of 17 U.S.C. § 1202(b)(1). Plaintiff will promptly advise the Court and  
23 counsel if an amended complaint is required.  
24

25  
26 Although defendants are investigating plaintiff's allegation, defendants assert  
27

1 that no documents or ESI was improperly handled and sanctions are not warranted.

2 In fact, defendants have already provided the files at issue to plaintiff. Defendants are  
3 still determining the manner in which they possess electronic data. Counsel will meet  
4 and confer regarding stipulations concerning the method of production of electronic  
5 data, if any.  
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7  
8 **(D) Issues about claims of privilege or of protection as trial-preparation**  
9 **materials.**  
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11 The parties believe a stipulated Protective Order should be entered to allow  
12 the parties to protect and maintain the confidentiality of proprietary and highly  
13 sensitive business and financial information, consistent with *Foltz v. State Farm Mut.*  
14 *Auto. Ins. Co.*, 331 F.3d 1122 (9<sup>th</sup> Cir. 2003).  
15

16 **(E) Changes in the limitations on discovery imposed under the federal rules or**  
17 **by local rules, and other limitations which should be imposed.**  
18

19 The parties do not believe that any changes should be made in the limitations  
20 on discovery imposed under the Federal Rules of Civil Procedure or by local rule, or  
21 that any other limitations should be imposed at this time. The parties reserve the right  
22 to revisit this issue at a later date.  
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1 (F) Other Orders that should be entered by the Court under Rule  
2 26( c) or Rule 16(b) and ( c).  
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4 As stated above, a stipulated Protective Order is appropriate. Also, the Court is  
5 advised that Plaintiff may request to file a Second Amended Complaint pursuant to  
6 Rule 16( c)(2)(B).  
7

8 2. **REQUIREMENTS PURSUANT TO LOCAL RULE 26-1.**  
9

10 (a) *Complex cases.* The parties believe this case is not a complex case  
11 calling for use of the Manual for Complex Litigation.

12 (b) *Motion Schedule.* Plaintiff intends to seek Summary Judgment/Partial  
13 Summary Judgment and/or Sanctions for destruction of evidentiary  
14 material. The cutoff date for such a motion shall be October 31, 2012.  
15 Defendants intend to bring a motion for summary judgment or partial  
16 summary judgment. The parties propose that all dispositive or partially  
17 dispositive motions be filed no later than October 31, 2012. The parties  
18 will confer on a briefing schedule for any such motions that will provide  
19 more time for opposition and reply briefing than provided under Central  
20 District Local Rule 7.  
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22 ( c) The parties have discussed mediation, but it appears to plaintiff some  
23 discovery is required before it can undertake a serious effort at  
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1 mediation. A mediation previously planned for February 17, 2012 was  
2 cancelled by plaintiff.  
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4 (d) Trial Estimate.

5 The parties estimate that the trial will last 5 days. Plaintiff and  
6 defendants request a jury trial on all claims so triable.  
7

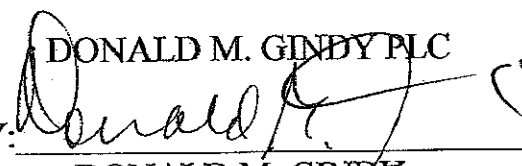
8 (e) Additional Parties.

9 The parties do not anticipate the appearance of any additional parties.  
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11 (f) Expert Witness (Rule 26-1(f))

12 The parties propose that expert witnesses be designated, and expert  
13 witness reports be disclosed, on August 15, 2012. The parties propose  
14 that rebuttal expert witnesses be designated, and rebuttal expert witness  
15 reports be disclosed, on September 12, 2012. The parties propose an  
16 expert witness discovery cutoff of September 28, 2012.  
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21 DATED: February 9, 2012

22 BY:   
23 DONALD M. GINDY  
24 Attorneys for Plaintiff VBConversions LLC  
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1 DATED: February 10, 2012 GREENBERG GLUSKER FIELDS CLAMAN  
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